

Exhibit 27

In The Matter Of:

Darcy Corbitt v.

Hal Taylor

Donald Leach

December 21, 2018

Tempest Reporting, Inc.

175 South Main, Suite 710

Salt Lake City, UT 84111

(801) 521-5222

Original File 122118DL.txt

Min-U-Script® with Word Index

Page 0		Page 3	
UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION		I N D E X	
DARCY CORBITT, et al., :		3 DONALD LEACH	Page
Plaintiffs, : Civil Action No.		4 MR. ARKLES	5
-v- :		-oOo-	
HAL TAYLOR, in his official :		E X H I B I T S	
capacity as Secretary of the : Deposition of:		9 No. Description Page	
Alabama Law Enforcement : DONALD LEACH		10 Exhibit 38 Expert Report of Donald Leach	5
Agency, et al., :		11 Exhibit 39 Instructions to Change the	5
Defendants. :		12 Indicator of Sex on an Idaho	
		13 Birth Certificate to Reflect	
		14 Gender Identity	
		15 Exhibit 40 National Center for	5
		16 Transgender Equality website	
		17 printout	
		18 Exhibit 41 Tennessee Rules and	5
		19 Regulations excerpt	
		20 Exhibit 42 Gender Designation Form	5
		21 Exhibit 43 National PREA Resource Center	5
		22 Guidance in Cross-Gender and	
		23 Transgender Pat Searches	
		24 Exhibit 44 Issues Surrounding Managing	5
		25 Lesbian, Gay, Bisexual,	
Place: TEMPEST REPORTING, INC. 175 South Main Street, #710 Salt Lake City, Utah 84111			
Date: December 21, 2018 9:03 a.m.			
Reporter: Vickie Larsen, CSR/RMR			
Page 2		Page 4	
A P P E A R A N C E S		Transgender & Intersex	
For the Plaintiff (present by videoconference):		Offenders in Jails by	
Gabriel Arkles		Donald L. Leach II, Ph.D.	
ACLU LGBT & HIV Project/ACLU Foundation		-oOo-	
125 Broad Street, 18th Floor			
New York, New York 10004			
212.549.2605			
Garkles@aclu.org			
Brock Boone			
ACLU OF ALABAMA			
P.O. Box 6179			
Montgomery, Alabama 36106			
334.265.2754			
Bboone@aclualabama.org			
For the Defendants (present by videoconference):			
Brad A. Chynoweth			
ASSISTANT ATTORNEY GENERAL			
CONSTITUTIONAL DEFENSE DIVISION			
OFFICE OF THE ATTORNEY GENERAL			
STATE OF ALABAMA			
501 Washington Avenue			
P.O. Box 300152			
Montgomery, Alabama 36130			
334.242.7997			
Bchynoweth@ago.state.al.us			
Also Present: (Present by videoconference):			
Joshua Block			
-oOo-			

<p style="text-align: right;">Page 9</p> <p>1 Justice Center of Bureau of Prisons on a policy of</p> <p>2 transgender offender management.</p> <p>3 Q. Thank you.</p> <p>4 And just to be clear, that's something</p> <p>5 that you reviewed after writing your report and before</p> <p>6 the deposition today; right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Thank you.</p> <p>9 And did you write your report from</p> <p>10 scratch, or did you build off of something that had</p> <p>11 already been written?</p> <p>12 A. No, I write everything from scratch.</p> <p>13 Q. Thanks.</p> <p>14 And aside from reviewing the documents</p> <p>15 you mentioned and talking with Brad, is there anything</p> <p>16 else that you did to prepare for the deposition today?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Okay. If you turn to Page 5 in your</p> <p>19 report, the Case History Disclosure, is this list of</p> <p>20 your past depositions and trial testimony still up to</p> <p>21 date?</p> <p>22 A. As of today, yes.</p> <p>23 Q. Okay. Thank you.</p> <p>24 And do you recall which, if any, of these</p> <p>25 cases you testified at trial in as opposed to just</p>	<p style="text-align: right;">Page 11</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. Thank you.</p> <p>4 And -- and then \$2,000 for any part of a</p> <p>5 day spent on trial testimony; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And \$1,000 a day for travel and on-site</p> <p>8 consultation; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Great. Thank you.</p> <p>11 So I'm going to go through and I'm going</p> <p>12 to ask you for your definitions of some words that</p> <p>13 were used in your report, just to make sure that I</p> <p>14 understand them.</p> <p>15 So first could you explain your</p> <p>16 understanding of the term "sex"?</p> <p>17 A. My understanding of the term "sex"?</p> <p>18 Q. Yes.</p> <p>19 A. Well, that's a very broad understanding.</p> <p>20 As I try to illustrate in the report, there are</p> <p>21 multiple components to the term "sex." There is --</p> <p>22 there's -- and then when I do presentations, like I'm</p> <p>23 getting ready to do a presentation for the Los Angeles</p> <p>24 County Sheriff's Office regarding the management of</p> <p>25 lesbian, gay, transgender, and intersex persons within</p>
<p style="text-align: right;">Page 10</p> <p>1 being deposed?</p> <p>2 A. Rachel Hammers v. Douglas County, that</p> <p>3 would be Number 5. Anthony Waller v. Bradley</p> <p>4 Lovinger, that would be Number 11. Number 20,</p> <p>5 multiple initials v. The City of Puyallup. Number 22,</p> <p>6 Frank Hyman v. City of Philadelphia. That's it.</p> <p>7 Q. Thank you.</p> <p>8 And have you ever, aside from this case,</p> <p>9 prepared an expert report on transgender or intersex</p> <p>10 issues?</p> <p>11 A. No.</p> <p>12 Q. And have you ever, aside from in this</p> <p>13 case, prepared an expert report on driver's licenses</p> <p>14 before?</p> <p>15 A. No.</p> <p>16 Q. Thank you.</p> <p>17 And then I just want to make sure I have</p> <p>18 your compensation information correct. So you are</p> <p>19 being compensated \$200 an hour for a research</p> <p>20 consultation and report creation; right?</p> <p>21 A. Yes.</p> <p>22 Q. And you received \$3,000 for any part of a</p> <p>23 day involved in a video deposition; right?</p> <p>24 A. Yes.</p> <p>25 Q. So you're being compensated \$3,000 today;</p>	<p style="text-align: right;">Page 12</p> <p>1 their system.</p> <p>2 It's a presentation I've done a number of</p> <p>3 times. You and I did it one time -- not -- not the</p> <p>4 exhaustive one that I do here -- where I talk about</p> <p>5 the three parts of it, as I did in the report.</p> <p>6 The first part of it is it</p> <p>7 physiognomy? The actual, I guess what a lot of</p> <p>8 individuals might refer to as the biological levels of</p> <p>9 sex, and then you have the gender portion of sex, and</p> <p>10 then you have the idea of sexual preference.</p> <p>11 So there really are three components to</p> <p>12 sex that exist out there that have a tendency to get</p> <p>13 very jumbled together. I think that's the point I was</p> <p>14 trying to make in my report. They get jumbled</p> <p>15 together, they get mixed up, and it's important</p> <p>16 sometimes to come up with definitions. So which</p> <p>17 definition are we looking at.</p> <p>18 Q. Okay. Thank you.</p> <p>19 MR. ARKLES: Let the record reflect that</p> <p>20 Joshua Block has just joined me here in the room.</p> <p>21 Q. And what's the basis for that definition</p> <p>22 of sex?</p> <p>23 A. Sir?</p> <p>24 Q. What do you base that definition for sex</p> <p>25 on?</p>

Page 17

1 realm of how people express themselves with one
2 another and all those particular things.
3 Even my graduate work in geography was
4 based upon people's perception of space, place, and
5 time and how they view themselves acting and
6 interacting within their geographical environment. So
7 -- so it's based upon a lot of those issues, yes.
8 So training is one, education and
9 background is one, observations from the correctional
10 environment is one, and just being a human being and
11 interacting and being an individual who's open to
12 examine a lot of these -- these issues, because, you
13 know, a lot of people aren't open to examining a lot
14 of these issues.
15 As you and I well know, you know, we can
16 create quite a bit of disharmony amongst people when
17 we begin to challenge their perceptions of things,
18 like gender identity, sex, become problematic for
19 them.
20 Q. It can.
21 And then -- and then could you just also
22 define for me the term "sexual preference."
23 A. Sexual preference is basically, as I term
24 in my presentations, who it is that turns you on. Who
25 it is that has you elicit that sexual excitement.

Page 18

1 That's sexual preference.
2 Q. Okay. And could you define
3 "transgender," please.
4 A. Oh, wow. Now that's getting into a
5 really complex area, because even from the time that
6 you and I first did our presentations back in the
7 early 2000s to now, we see that whole term changing.
8 It's -- it's kind of -- it's morphing as -- as the
9 societal recognition of the issues involved becomes
10 much more prevalent.
11 So to -- for me to give a definition of
12 it, it would be just what I perceive it as being
13 versus what it might be tomorrow. So what I say could
14 be what it was yesterday.
15 Q. And when you use the term "transgender"
16 in your report, what did you mean by it in that
17 moment?
18 A. What was the last statement? In that
19 moment?
20 Q. Yes. What did you mean by transgender as
21 you used it in your report?
22 A. Typically, transgender is -- is basically
23 what I've learned in my discussions and dealings with
24 individuals like you, individuals that -- that have a
25 -- a different biological physiognomic sex whose

Page 19

1 gender identity felt that was not in line with what
2 they perceive themselves to be. As I say in my
3 presentations, when they look in the mirror, who they
4 see themselves as when they look in the mirror. That
5 becomes an issue where an individual becomes --
6 becomes transgender.
7 So it's a person who -- who sees that,
8 feels that, and then makes the decision that they're
9 going to begin to live as the other gender, which
10 might be separate from their physiognomy.
11 Q. Thank you.
12 And then I'm going to ask you the same
13 thing for intersex. Can you tell me what that term
14 means as you used it in your report?
15 A. Intersex is more the medical term that
16 refers to individuals that have ambiguous genitalia,
17 or in the medical profession, disorders of sexual
18 development.
19 The American Intersex Society -- and I
20 think that young lady was with us when we did the
21 presentation out there, the president of it -- but
22 it's individuals whose -- who have some level of --
23 some level of sexual development which doesn't fit
24 into what is the classical idea or what I talk about
25 in my paper, either end of the continuum of what would

Page 20

1 be an individual's perception of fully female or fully
2 male. That becomes intersex.
3 Disorders of sexual development. And
4 it's a range. And it's a range. We're truly causing
5 the question of whether or not any of us are truly
6 fully female or fully male. So we run into
7 definitional issues even when we get to that point.
8 Q. Right.
9 So you said in your report sex is sort of
10 a continuum between female and male; is that right?
11 A. Intersex.
12 Q. Okay. Intersex is people who are a
13 continuum between female and male?
14 A. Intersex lies on this continuum,
15 intersex -- because there's a range in there. I think
16 most people out in society, if -- when you talk, and I
17 know when I do my presentations in jails and with law
18 enforcement, and even with community groups, most
19 individuals still want to think of intersex strictly
20 as -- as a hermaphrodite, okay, an individual that has
21 both fully functioning sexual organs.
22 But the reality is, it's not like that.
23 That is -- that is so rare that it's an anomaly, that
24 it gets written of that you have two fully
25 functioning. So, you know, that would be the middle

Page 21

1 of that spectrum of fully female to fully male.
2 The truth of it is that people lie more
3 somewhere along that continuum. And even the American
4 Intersex Society is trying to get away from this whole
5 idea of hermaphroditism. They want to eliminate that,
6 because it brings up certain pejorative images when
7 people talk about that.
8 And it makes sense to me that they would
9 because, again, it's a range rather than -- rather
10 than a strict concept that people have that may -- may
11 completely be false.
12 Q. And when you refer to the American
13 Intersex Organization, it's not the Intersex Society
14 of North America that you're talking about, or a
15 different organization?
16 A. The Intersex Society of North America,
17 yes.
18 Q. Okay. Thank you.
19 A. The president of it did the presentation
20 with you and I. Do you recall she was there?
21 Q. I think we might be thinking about
22 different presentations but --
23 A. Oh, man.
24 Q. -- that's okay.
25 A. Well, it just goes to show, I've been

Page 22

1 trying to get these ideas and concepts out, so we get
2 definitions made all around the country for years now.
3 2007 to now, that's 11 years.
4 Q. Yes, that's -- it's a while.
5 And you already touched on this, but
6 could you also explain to me so -- so do you see the
7 term "sex" and "gender" as different, and if so, how?
8 What's the difference between those two?
9 A. Well, it -- how do we want to use the
10 term "sex," first off? Do we want to use the term
11 "sex" in a very large overarching sense to meet all
12 three parts?
13 So, I mean, my presentation I give starts
14 out, it's all about sex in jails, okay. Well, first
15 off, what is sex in jails? If we use sex in jails as
16 that big overarching term, it would then encompass
17 physiognomy, it would encompass the gender identity,
18 and it would encompass the sexual preference issues.
19 Now, if we want to use sex as -- as the
20 behavior that occurs between two individuals, that
21 might be sexual preference, okay. But it could also
22 be sexual identity and a gender identity in it. So,
23 again, it's how do we want to define that. That's
24 part of the whole issue here.
25 Q. Okay. Just a couple more definitions.

Page 23

1 So could you tell me what the term "risk
2 tolerance" means as you used it in your report?
3 A. I'm sorry, I didn't catch the word.
4 Q. Risk tolerance.
5 A. Oh, risk tolerance. Yeah, risk
6 tolerance. It's more of a concept that's used in risk
7 management circles and insurance companies and, you
8 know -- okay. Risk tolerance is how much the
9 individual person, the agency had, or government, or
10 even community. How much they're willing to tolerate
11 potential risk versus non-risky type of
12 decision-making processes.
13 So risk tolerance is, you know, what
14 you're willing to stake. Individuals that gamble,
15 they go and they gamble at a casino and they put money
16 on the table, obviously have a high risk tolerance
17 level for the loss of money or else they wouldn't be
18 doing the gambling.
19 Individuals that don't want -- like, I do
20 a lot of presentations in Las Vegas. Probably, I
21 don't know, half a dozen or more times a year, and I
22 never go to the gambling tables because I always
23 figure I'm going to lose. So that mean my risk
24 tolerance level for losing my money is pretty low in
25 that case.

Page 24

1 And it works the same way when we're
2 talking about decision-making in -- in how we're going
3 to operate our facilities and our agencies and our
4 governments. There are certain risk tolerance levels
5 that we have to have.
6 We see this all in this whole debate
7 regarding medical marijuana around the country,
8 recreational marijuana around the country. There is a
9 level of risk tolerance in all of that that is
10 being -- being expressed by both the public and
11 government.
12 So -- and we -- we just see that in
13 operation. And we've seen it change in that -- in the
14 last 20 years.
15 Q. What change have you seen in the last
16 20 years?
17 A. In medical marijuana?
18 Q. Oh, I'm sorry. I thought you were
19 referring to -- I thought you were referring back to
20 corrections. No, I don't need to hear about medical
21 marijuana, thank you.
22 A. No, no, let's talk about it in
23 corrections. It's an interesting issue because --
24 because, you know, in a correctional environment, we
25 have to provide based on, you know, Estelle v. Gamble,

Page 29	Page 31
<p>1 been arising from the definition of</p> <p>2 sex -- "whether the one provided in</p> <p>3 Policy Order Number 63, carry a</p> <p>4 measure of risk. How risk adverse,</p> <p>5 or risk taking, the law enforcement</p> <p>6 or correctional administrator is</p> <p>7 grounded in that individual's</p> <p>8 personal and correctional</p> <p>9 philosophies, or 'weltanschauung.'</p> <p>10 The stat" -- there should have been</p> <p>11 the state -- "of Alabama provides</p> <p>12 through Policy Order Number 63 a</p> <p>13 starting point from which the law</p> <p>14 enforcement or correctional</p> <p>15 administrator can measure his or her</p> <p>16 policies or procedures."</p> <p>17 Q. Thank you.</p> <p>18 And is that, in fact, your opinion?</p> <p>19 A. Yes.</p> <p>20 Q. So would it be fair to say -- to say that</p> <p>21 different correctional administrators, based on their</p> <p>22 correctional philosophies, may make different</p> <p>23 decisions about what "sex" means?</p> <p>24 A. Yes.</p> <p>25 Q. Would it be fair to say that they make</p>	<p>1 the prison system.</p> <p>2 So, yeah, you see that happening.</p> <p>3 Q. And is it possible that there could be</p> <p>4 acceptable correctional practices that still vary in</p> <p>5 their definition of the term "sex"?</p> <p>6 A. Okay.</p> <p>7 Q. And -- sorry. So if you look back to</p> <p>8 Page 13, could you read the bolded language there?</p> <p>9 A. "In sum, my opinion is there is</p> <p>10 a governmental interest in having a</p> <p>11 standardized definition of sex, such</p> <p>12 as that established in Policy</p> <p>13 Order 63 for law enforcement and</p> <p>14 administrative purposes as expected</p> <p>15 by a reasonable correctional</p> <p>16 administrator so there is consistency</p> <p>17 in the development and application of</p> <p>18 administrative and operational</p> <p>19 policies and procedures."</p> <p>20 Q. And is that, in fact, your opinion?</p> <p>21 A. Yes.</p> <p>22 Q. So it's my understanding that it's</p> <p>23 helpful from a correctional perspective to -- for</p> <p>24 there to be a policy that leads to consistent</p> <p>25 information about sex on a driver's license.</p>
Page 30	Page 32
<p>1 different decisions about how to handle a</p> <p>2 classification of transgender people for those</p> <p>3 sex-based policies?</p> <p>4 A. Yes. Yes. I mean, you see that --</p> <p>5 Q. And is that -- go ahead.</p> <p>6 A. Go ahead. You know, I'm -- there was a</p> <p>7 case out of Wyoming that was just spot on. That point</p> <p>8 where Dimarco v. Department of Corrections Wyoming, I</p> <p>9 think it was -- I don't know if you're familiar with</p> <p>10 that case -- but an individual was housed for about</p> <p>11 nine months in the Laramie County Jail in Wyoming, and</p> <p>12 was housed in one method, and that -- in general</p> <p>13 population, free access, programming, recreations,</p> <p>14 services.</p> <p>15 And when she was moved to the Wyoming</p> <p>16 Department of Corrections, they immediately put her</p> <p>17 into a lockdown situation for over 400 and some days.</p> <p>18 She had high levels of restriction on</p> <p>19 interaction, wasn't allowed to interact with other</p> <p>20 inmates, wasn't allowed to interact with many staff,</p> <p>21 was prevented in purchasing certain levels of</p> <p>22 commissary.</p> <p>23 I mean, there were a number of things</p> <p>24 that were wrong. Now, that's within the same state.</p> <p>25 And all it was was a bus ride from the county jail to</p>	<p>1 Do I have that right?</p> <p>2 A. Can you repeat that, please.</p> <p>3 Q. Sure.</p> <p>4 So is it your opinion that for</p> <p>5 corrections, it's useful for there to be a policy</p> <p>6 about driver's licenses that provide some consistent</p> <p>7 information about what they mean by "sex"?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And you're not taking -- you're</p> <p>10 not expressing an opinion about what the best</p> <p>11 definition of sex would be for that purpose, are you?</p> <p>12 A. No. Again, that best definition would be</p> <p>13 based upon the risk tolerance level.</p> <p>14 Q. Okay. So if instead of a current policy,</p> <p>15 Alabama had a policy that said a driver's license sex</p> <p>16 designation may be amended to reflect the person's</p> <p>17 gender identity, would that information be useful to</p> <p>18 correctional administrators?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And if they had a policy that</p> <p>21 permitted a change in sex designation when a doctor</p> <p>22 certified that appropriate clinical treatment had been</p> <p>23 provided, would that be helpful to correctional</p> <p>24 administrators?</p> <p>25 A. Well, we would have to know what the</p>

Page 33	Page 35
<p>1 definition is of "appropriate clinical treatment." 2 Q. Okay. So -- and if that was left to the 3 discretion of the doctor, would that still be helpful 4 to correctional administrators? 5 A. Well, I think having a definition is what 6 is helpful to correctional administrators. Having a 7 starting point. 8 Q. Okay. And so would -- would saying that 9 the person had received appropriate clinical treatment 10 serve as a starting point? 11 A. It would help if that was what was part 12 of the definition that was being provided. 13 Q. Okay. Thank you. 14 And, in your opinion, it would be an 15 acceptable correctional practice to use a definition 16 of sex different than the one provided in Policy 17 Order 63; right? 18 A. Yes, because it's all based on the 19 discretion of the administrator of the correctional 20 agency, how they're going to base those definitions, 21 where are they going to get that information from, and 22 if they do it off of Policy 63, then they're simply 23 following as a baseline what was provided to them by 24 the state. And it helps them to establish the 25 rationale for their decision-making processes in</p>	<p>1 you have to have someplace to get the information 2 from. And most jails around the country, if the 3 individual has a driver's license, they will use a 4 driver's license, and most people do have a driver's 5 license. 6 Q. If somebody came into a jail and didn't 7 have a driver's license, how would that correctional 8 administrator handle that? 9 A. Well, then that becomes a little bit more 10 tricky for us. We then have to rely on secondary 11 definitions of it. So it might be both the asking of 12 the individual, it might require some sort of a 13 medical examination by a qualified medical provider, 14 it might involve us having a staff member simply begin 15 the strip search processes and then if they -- if they 16 perceive -- because I wouldn't say that they 17 identify -- but if they perceive that the individual 18 is not the same sex that they are, then they might 19 have to stop that process. 20 Q. Would it be acceptable for a correctional 21 administrator to use a sex designation from a pass 22 point as a starting point rather than a sex 23 designation from a driver's license? 24 A. If they want to put that in as part of 25 their data point, yes, they could do that. That's a</p>
Page 34	Page 36
<p>1 developing their definitions. 2 Q. And can you just spell out for me, how is 3 that helpful? 4 A. You mean how is it helpful to a jail to 5 know what the sex of the individual is? 6 Q. Well, how is it helpful to a jail to know 7 what sex the -- the person is considered to be for 8 purposes of driver's licenses? 9 A. Well, again, it provides a starting point 10 for them to develop their policies related to searches 11 of the individual. Cross-gender searches, especially 12 unclothed or strip searches by -- by differing sex 13 individuals, you know, has been found to be intrusive. 14 So, yeah, having that driver's license 15 tells us a lot about what is the sex of both the 16 employees, in that case, and the sex of the individual 17 that is to be searched, or the arrestee, in that case. 18 Q. In your experience, do correctional 19 administrators typically take into account the sex 20 designation on a driver's license in deciding how to 21 apply those sex-based policies? 22 A. Oh, sure, that's probably one of the -- 23 one of the foremost pieces of information that's used 24 when booking an individual. The first time you come 25 in contact with an individual into -- into your jail,</p>	<p>1 discretionary decision, just like the use of the male 2 versus female. The receipt of the physician's letter 3 is the discretionary decision from the State of 4 Alabama and the driver's license. 5 I mean, these are discretionary 6 governmental decisions that we have to use in order to 7 develop our baselines. 8 Q. So if somebody came in and was booked in 9 a jail and you had a driver's license, how would that 10 driver's license influence what happened next? 11 A. Oh, wow, I can give you a prime example 12 of that if you'd like, okay. 13 Q. Please. 14 A. Good friend of mine, an under sheriff 15 with the county in Grand Rapids, Michigan, had -- got 16 a call. In fact, he called me up. I got a call, he 17 had an arrestee was pulled over on the street for a 18 traffic violation, simple traffic violation. 19 The officer then went up to the vehicle, 20 looked in the vehicle, saw what appeared to be 21 60s-plus-year-old male, heavy beard. And when asked 22 for the driver's license and insurance, presented a 23 driver's license for a female. 24 On the driver's license it had -- it had 25 the name of the individual, but it had the sex</p>

<p style="text-align: right;">Page 37</p> <p>1 designation as female.</p> <p>2 The officer then says this isn't your</p> <p>3 driver's license. And the arrestee, the pulled over,</p> <p>4 said that is my driver's license.</p> <p>5 And apparently what had happened and</p> <p>6 taken place with this individual was at some point in</p> <p>7 their -- in his or her late 30s, had gone through a</p> <p>8 crisis period and had been convinced that some sort of</p> <p>9 sexual reassignment surgery was the way to go in order</p> <p>10 to correct some of this phoria they were experiencing.</p> <p>11 So he then went through the whole</p> <p>12 process, lived that way for approximately 20 years as</p> <p>13 a female; had the birth certificate changed, had the</p> <p>14 driver's license changed, and lived that way.</p> <p>15 And then when he turned in his 60s he</p> <p>16 felt as though he'd made a grand mistake and decided,</p> <p>17 no, that was not the right thing to have happened to</p> <p>18 him.</p> <p>19 So he then quit taking the hormones, he</p> <p>20 began to revert back more appearances of being a male.</p> <p>21 So of course when he got pulled over he appeared to</p> <p>22 the arresting officer to be a male. The driver's</p> <p>23 license said female.</p> <p>24 So the arresting officer promptly</p> <p>25 arrested him for possession of a fraudulent</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. What did you advise that person to do</p> <p>2 with that person in Grand Rapids?</p> <p>3 A. Well, again, he had definitions. He had</p> <p>4 definitions for how they would do it. And what he was</p> <p>5 wondering was, okay, how do I modify my definitions?</p> <p>6 And that's what we talked about was,</p> <p>7 okay, how do we modify definitions? How do we go</p> <p>8 about doing this? Because all the old definitions</p> <p>9 that he had didn't seem to work in this situation,</p> <p>10 so -- but he needed a starting point.</p> <p>11 So at least we had a starting point for</p> <p>12 where to take the housing and supervision and</p> <p>13 services. So my -- my recommendations to him was, all</p> <p>14 right, you have an individual there. Who do you feel</p> <p>15 most comfortable with having search you?</p> <p>16 All right. The appearance -- by all</p> <p>17 outward appearances, we have a male. The genitalia</p> <p>18 has been reconstructed based upon sexual reassignment</p> <p>19 surgery. The breast implants had been removed.</p> <p>20 Okay, so who's going to do the strip</p> <p>21 searching of the individual? And, again, who do you</p> <p>22 feel most comfortable? And in this particular case,</p> <p>23 the gentleman had no problem with a male officer.</p> <p>24 So then it became an issue of where do we</p> <p>25 house in our jail? And when I asked him -- I asked</p>
<p style="text-align: right;">Page 38</p> <p>1 instrument, okay. Now it's a felony. It went from a</p> <p>2 traffic stop to a felony possession of a fraudulent</p> <p>3 instrument.</p> <p>4 He gets brought to the jail. That's</p> <p>5 where I get called by the administrator, the under</p> <p>6 sheriff up there, a friend of mine. He's like, what</p> <p>7 should we do here?</p> <p>8 And that's how it impacts jails. Because</p> <p>9 the questions that he wanted was, who does the</p> <p>10 searching now, okay. Who -- who do I house him with</p> <p>11 now? How do I proceed? Or do I -- do I take the --</p> <p>12 the very risk adverse practice where I put them into</p> <p>13 a situation where they have no contact with anybody</p> <p>14 else in the jail, no contact with other inmates.</p> <p>15 I mean, very -- you know, what I consider</p> <p>16 to be kind of a very punitive-type of environment. So</p> <p>17 we talked about it.</p> <p>18 So, yeah, those issues about the driver's</p> <p>19 license have a huge impact on who's going to do the</p> <p>20 searches at booking, who's going to do the strip</p> <p>21 search, where we going to house, you know, what type</p> <p>22 of services are we going to provide, what type of</p> <p>23 programming are we going to allow access to.</p> <p>24 So, you know, a lot more decisions than</p> <p>25 just simply what's on the driver's license.</p>	<p style="text-align: right;">Page 40</p> <p>1 him very simple question, was how often do -- do --</p> <p>2 does one inmate look at the sexual genitalia of</p> <p>3 another inmate?</p> <p>4 And the situation I used was, we have a</p> <p>5 lot of vets that are coming back from Iraq, from</p> <p>6 Afghanistan, from Syria, and I reflect back to my own</p> <p>7 experience in the Marine Corps during the Vietnam War</p> <p>8 where these Bouncing Bettys were used a lot by the</p> <p>9 North Vietnamese.</p> <p>10 These were small mines that would pop up</p> <p>11 about waist level, and when they went off, they</p> <p>12 didn't -- they didn't necessarily kill you, but they</p> <p>13 did blow your genitalia off. That was not an uncommon</p> <p>14 situation.</p> <p>15 So what I asked him was if you had a vet</p> <p>16 that came in and he'd had his genitalia blown off in</p> <p>17 an IED explosion, where would you house that veteran</p> <p>18 in your jail? Now all -- he just simply lacks --</p> <p>19 lacks a penis and a scrotum, okay. Where would you</p> <p>20 house him in the jail?</p> <p>21 And that was where we started. That</p> <p>22 became the baseline for the discussion about housing</p> <p>23 supervision, the provision of services to the</p> <p>24 individual.</p> <p>25 Q. And do you know what happened to that</p>

<p style="text-align: right;">Page 53</p> <p>1 all sex-based classification decisions; is that right?</p> <p>2 A. Discretionary decisions, yeah. For the</p> <p>3 administrator of that particular agency, yes. Keeping</p> <p>4 in mind their risk tolerance for things like Fourth</p> <p>5 Amendment violations or EEOC issues. I mean, there's</p> <p>6 a range of other issues that go into that risk</p> <p>7 tolerance decision-making process, but it's all</p> <p>8 discretionary.</p> <p>9 Q. So would you say a correctional</p> <p>10 administrator would have to have a high degree of risk</p> <p>11 tolerance to simply go off of what was on the driver's</p> <p>12 license?</p> <p>13 A. No. I would think that they would</p> <p>14 probably have a lower degree of risk tolerance and be</p> <p>15 more risk adverse to just simply go off of the</p> <p>16 driver's license.</p> <p>17 Q. And why is that?</p> <p>18 A. Well, because that provides them with a</p> <p>19 lot of good legal cover that way. I mean, if they're</p> <p>20 using the definition and the definition is</p> <p>21 established, in this case by the State of Alabama for</p> <p>22 what is male or female, and they're using that on the</p> <p>23 driver's license, then they get some liability</p> <p>24 coverage in their policies that say, well, look, we're</p> <p>25 getting our information about whether or not this</p>	<p style="text-align: right;">Page 55</p> <p>1 all, no. You're talking about an officer?</p> <p>2 Q. Yes.</p> <p>3 A. You used the term "officer."</p> <p>4 Q. Yes.</p> <p>5 A. Yeah, line level staff.</p> <p>6 No. I think the line level staff are</p> <p>7 going to expect that gender identity, physiognomy, and</p> <p>8 the driver's license are all going to be reflective of</p> <p>9 one another.</p> <p>10 Q. So in Alabama -- I'd like you just to</p> <p>11 assume for a moment that what I'm telling you is true.</p> <p>12 So in Alabama, it is possible to change</p> <p>13 the sex designation on one's license based on either</p> <p>14 evidence of sex reassignment surgery or that one has</p> <p>15 amended their birth certificate.</p> <p>16 The amendment of the birth certificate</p> <p>17 can be a birth certificate from any jurisdiction, and</p> <p>18 some jurisdictions permit changes to birth</p> <p>19 certificates without sex reassignment surgery.</p> <p>20 So because of that, it is possible that</p> <p>21 two people who identify as male but who have female</p> <p>22 typical external genitals, one who was born in, say,</p> <p>23 Idaho would have male on his Alabama license, and one</p> <p>24 who is born in Alabama might be female on his license.</p> <p>25 Does that make sense so far?</p>
<p style="text-align: right;">Page 54</p> <p>1 individual is a male or female based upon what the</p> <p>2 state tells us that they're male or female, which is</p> <p>3 what they recognize on the driver's license. So they</p> <p>4 get some cover that way.</p> <p>5 Q. And would that be true regardless what</p> <p>6 state a driver's license is from?</p> <p>7 A. Well, I think that, yeah, that's -- I</p> <p>8 mean, if that's their data point, that's where they</p> <p>9 get the information for it, yeah, it would be true</p> <p>10 everywhere.</p> <p>11 Q. Okay. But as you mentioned earlier, if</p> <p>12 they wanted to take into account all of the aspects of</p> <p>13 physicality, gender identity, and gender expression,</p> <p>14 and sexual preference, they're probably not going to</p> <p>15 be able to do that based on just the sex designation</p> <p>16 on a driver's license; is that right?</p> <p>17 A. I would say that that's true, because</p> <p>18 that's -- that's just one data point in that decision</p> <p>19 process. That's one discretionary data point that</p> <p>20 they're using as part of making those decisions.</p> <p>21 Q. Okay. So would a reasonable correctional</p> <p>22 officer expect that two people with the same external</p> <p>23 genitals and the same gender identity might have a</p> <p>24 different sex designation on their license?</p> <p>25 A. I don't think you would expect that at</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Yeah, because their definition -- again,</p> <p>2 here's where -- here's where that discretionary</p> <p>3 decision comes in in that whole process, is that part</p> <p>4 of their -- their definition for that driver's license</p> <p>5 designation says we will accept what another state</p> <p>6 says, all right.</p> <p>7 Now -- and that's their discretionary</p> <p>8 decision. They could very well write into that</p> <p>9 definition, we're not going to accept what another</p> <p>10 state says. You have to meet our criteria.</p> <p>11 So, yeah, you might have a birth</p> <p>12 certificate from Idaho that you had amended there and</p> <p>13 they don't require it; but in our state, your birth</p> <p>14 certificate, in order to be amended like that, we have</p> <p>15 that requirement. They could very easily make that as</p> <p>16 a designation.</p> <p>17 Q. Okay. And so, again, assuming that what</p> <p>18 I told you is true and they haven't made that</p> <p>19 designation, they are accepting certificates from</p> <p>20 other states, would that affect how useful this policy</p> <p>21 would be for -- as a baseline for correctional</p> <p>22 administrators?</p> <p>23 A. Yes. Because if you came in and you had</p> <p>24 "male" on your driver's license, and that basically</p> <p>25 operationalized decision-making for searches by other</p>

Page 57

1 males, then that's how you would be searched, and that
2 would give cover.
3 And if the individual came in and they
4 had "female" on their driver's license and that
5 operationalized decisions that led to being searched
6 by a female, again, that would give cover.
7 So in that we would say that there was
8 not a Fourth Amendment violation, because in each case
9 the information that we used to drive our
10 decision-making process for the intrusiveness of the
11 search was based upon the information that was on the
12 driver's license, which is recognized by the State of
13 Alabama.
14 Q. Okay. So whatever the policy is in
15 Alabama, going by the license in Alabama would provide
16 some legal cover for correctional administrators; is
17 that right?
18 A. Yes, it helps.
19 Q. And earlier you talked to me about a
20 person who had transitioned to female and then
21 transitioned back to male who was -- who was stopped
22 in Grand Rapids.
23 Would it be possible that a transgender
24 man, somebody who was assigned female at birth and who
25 had not had genital reconstruction surgery and who had

Page 58

1 a beard, would also be stopped under those same
2 circumstances and accused of not having a valid ID?
3 A. Well, it depends on how the driver's
4 license was issued.
5 Q. If the driver's license were issued such
6 that it said female but the person appeared typically
7 male with clothes on, is it possible that the same
8 thing could have happened that happened to the person
9 you told me about in Michigan?
10 A. I would imagine so, yes.
11 Q. And do you -- you mentioned in your
12 report that it's also important to identify staff sex
13 for purposes of searches and supervision; is that
14 right?
15 A. Yes.
16 Q. Is there a typical way that correctional
17 administrators go about identifying the sex of staff
18 members?
19 A. Oh, my. Now you're really getting
20 tricky. Geez, you're running into all sorts of EEOC
21 issues. So I got a story for you, how's that?
22 Q. Great. Great.
23 A. All right. I like my stories for you.
24 All right. Good friend of mine, the
25 under sheriff in Charleston County, South Carolina;

Page 59

1 large jail, 2,600 beds. Sitting in his office one
2 day, they're doing hiring, okay, for new employees.
3 The -- and I've got -- I did an interview with him
4 like this, a distance interview, and I use it in my
5 presentations.
6 And he describes how he's sitting in his
7 office and these three members of the hiring board
8 come to his office; one is a captain, she's an African
9 American female; one is a sergeant, and he's an
10 African American male; and then the other is just a
11 male officer.
12 And they come in the room and they say,
13 Chief, we got a problem.
14 So, okay, What's the problem?
15 Said, Well, we -- we had a candidate come
16 before the board, and we all looked at the folder.
17 The folder and the information all looked really good,
18 and we said, Send young lady in, because the name on
19 the folder, the sex in the folder, all indicated that
20 this was a female applying for a correctional officer
21 job, all right.
22 They bring the individual in, sits down
23 at the table, and they look up and they say, Oh, there
24 must be some mistake. We're expecting -- just as a
25 name I'll toss out -- they're expecting Marsha.

Page 60

1 And he says, No, my name's Matthew, I
2 used to be Marsha, from underneath a heavy beard.
3 And they say, Well, what do you want us
4 to do, chief?
5 And he said, Well, was the individual a
6 good candidate?
7 They said, Well, yeah, yeah, good
8 candidate.
9 Well, how was the interview?
10 Well, the interview was fine, yeah, good
11 candidate.
12 So he says -- he turned to the African
13 American captain, female, and he says, you know, in
14 Charleston ten years ago, 20 years ago, we'd have
15 looked at you and we'd have said, a female officer
16 working in the jail? In a male housing unit? In
17 command? We can't do that. We can't have that.
18 And he turned to the African American
19 sergeant and he said, 40 years ago in Charleston,
20 South Carolina, we'd have looked at you and said, an
21 African American man working in the jail? We can't
22 have that. We can't do that.
23 He said, now, if we'd have lived and had
24 those policies and kept those policies, neither one of
25 you would be here or in your positions. So what do

Page 97

1 say that in our changing world, this evolving sense of
2 decency that we have in our society, some of our
3 practices have to change, but we need definitional --
4 definitions on which to base how we make those
5 changes. That's critical.
6 So one other thing. Gender of staff.
7 Gender of staff. Are we talking about what the staff
8 identify as or are we talking about what the staff has
9 as plumbing?
10 Q. Right.
11 A. You see how definitions come in.
12 Q. So it sounds like you don't think that --
13 that restrictions on cross-gender pat searches are
14 appropriate; is that right?
15 A. No. Not blanket like this, no. This is
16 a blanket policy, no. Blanket policies like that, no.
17 Q. Okay.
18 A. I've had my discussions with Andy Moss on
19 this. I know Andy. You know Andy.
20 Q. Is Andy one of the authors of this -- of
21 this guidance you think?
22 A. It's by The Moss Group.
23 Q. Yeah.
24 A. That's her company. I like Andy.
25 Q. So -- so if you don't think that, in

Page 98

1 general, cross-gender pat searches should be
2 prohibited, then it isn't necessarily required to
3 figure out how to classify somebody for purposes of
4 sex before doing a pat search; is that right?
5 A. Well, you have to have an idea of who to
6 have them search, right? So you have to have some --
7 you have to have some basis.
8 Q. Well, but I thought you said that for pat
9 searches it would be okay to have men search women or
10 to have women search men?
11 A. Oh, yeah.
12 Q. Am I wrong?
13 A. In my jail it would be. And, in fact --
14 in fact, we instituted cross-gender supervision in --
15 I was thinking it was, like, '89, '90, maybe.
16 Prior to that, in the state of Kentucky,
17 female officers -- they were called matrons, you
18 couldn't even call them officers, they were called
19 matrons -- they only dealt with the female inmates and
20 the male officers only dealt with the male inmates.
21 Which was okay except that there was one
22 captain, one lieutenant, one sergeant position. So if
23 you were a female officer and you came -- a female
24 matron at that time -- you came to work, your
25 opportunities for advancement within the organization

Page 99

1 were significantly limited.
2 There was one sergeant, one lieutenant.
3 But if you were a male officer, we had, God, 25
4 sergeant positions, and a dozen lieutenant positions.
5 So from an employee/employer perspective,
6 we were really discriminating against our female staff
7 in the way we managed them in that way. So we
8 integrate them.
9 Now, when we did that, all the male staff
10 claimed that the female officers were going to get
11 raped and assaulted, they couldn't control the male
12 housing units, the jail was going to go into a riot,
13 it was going to burn down, people were going to get
14 out, the community was going to be killed,
15 thermonuclear weapons are going to go off. I mean,
16 that's what you hear, okay. I mean, you get this
17 slippery slope argument.
18 In reality, we found that one of the best
19 performing officers we had in the jail was a
20 62-year-old female that the inmates called mom. She
21 could get them to do anything. She didn't have any
22 fights, okay. So that was good.
23 But the male staff, they all resented it.
24 And I think some of it was now it opened up those
25 positions to the female officers, okay. Yeah, now

Page 100

1 they got a little more competition, all right. That
2 was one issue.
3 The next thing we found after doing that
4 was when -- when altercations were happening, they
5 were sending all the male officers to the
6 altercations, all right.
7 And so now we had use of force issues for
8 an officer showing he had more use of forces than this
9 other officer over here, so it looked like he was
10 being a thug in the jail. When in reality, it was how
11 we're operationalizing their uses of force policy. We
12 were only sending the males.
13 So we became an equal opportunity
14 ass-kicking jail. Meaning if you were a female
15 officer, you got to go in on that fight too.
16 Everybody went in.
17 And you know what we found? When we
18 started sending only women in or we started sending
19 women in with the men, fights went down. Inmates
20 chilled out when they came in, because they didn't
21 want to fight the women.
22 Now, is that true across the board? No.
23 We did have some fights with women. But basically,
24 across the board, we did not have that. So, again,
25 it's how we operationalize some of these things.

<p style="text-align: right;">Page 109</p> <p>1 a high risk tolerance.</p> <p>2 Our intake unit, you know, in most jails</p> <p>3 around the country, females get a very short amount of</p> <p>4 resource placed toward their housing, supervision,</p> <p>5 service provision.</p> <p>6 There was a 2002 report that came out</p> <p>7 from the National Institute of Corrections that talked</p> <p>8 about the -- the lack of good classification housing</p> <p>9 and supervision policies for female offenders in the</p> <p>10 country, because nobody puts money toward them.</p> <p>11 So, for example, you have a place like</p> <p>12 Memphis, Shelby County, Tennessee, 33 -- 3,600-bed</p> <p>13 jails, and they have very strict prohibitions in the</p> <p>14 state of Tennessee on separating males from females,</p> <p>15 sight and sound.</p> <p>16 Now, why do we have a site and sound</p> <p>17 separation once they cross that threshold of the jail?</p> <p>18 They can sit together in the back seat of the cruiser,</p> <p>19 but once they cross the threshold of the jail, we have</p> <p>20 to have them separated.</p> <p>21 That's because we all know if they can</p> <p>22 even hear each other, they're going to become sexually</p> <p>23 titillated by it, they're going to get some sort of</p> <p>24 gratification out of it. Okay, that's why we have to</p> <p>25 do this sight and sound separation.</p>	<p style="text-align: right;">Page 111</p> <p>1 level. They came down, they commingled in the common</p> <p>2 areas.</p> <p>3 We ran a work release housing unit with</p> <p>4 the males housed on one side and the female on the</p> <p>5 other side, and in between we had vending machines,</p> <p>6 and we had a pool table, ping pong table, a seating</p> <p>7 area, and they commingled freely. The males didn't go</p> <p>8 on their side, they didn't go on the male side.</p> <p>9 I mean, you know, okay. Did we ever have</p> <p>10 any problems in there? No. No, because we were</p> <p>11 proactive. As soon as we started seeing a behavior of</p> <p>12 an inmate inappropriate, we dealt with that behavior</p> <p>13 right then. That's how you have to do it.</p> <p>14 But that's my risk tolerance. When I</p> <p>15 talk about doing this, the jails around the country,</p> <p>16 they throw hands up. They're like, oh, my God, you</p> <p>17 can't do that. They'll be having sex all over the</p> <p>18 place.</p> <p>19 You know, what I find personally is that</p> <p>20 most people can control their sexual urges when</p> <p>21 they're in jail, and that short period of time that</p> <p>22 they're in, that they don't feel a need to have sex</p> <p>23 with every female that walks in the door, nor do the</p> <p>24 females feel that they have to have sex with every</p> <p>25 male that walks in the door, and it work both ways.</p>
<p style="text-align: right;">Page 110</p> <p>1 So you can't have them being booked in</p> <p>2 the same area. You can't have them being housed in</p> <p>3 the same area. Here's how it worked out in Memphis:</p> <p>4 The males had a beautiful sitting area, they had</p> <p>5 televisions to watch that they could, you know, pass</p> <p>6 the time with. They had telephones that they can call</p> <p>7 and get bonded out of custody with. Those were all</p> <p>8 available to them.</p> <p>9 You went to the female side, they were</p> <p>10 given a large utility closet, no television, no</p> <p>11 telephone. When they wanted to make a call, they had</p> <p>12 to get an officer to get them out, to walk them up the</p> <p>13 hall so the males couldn't see them, so that they</p> <p>14 could make a phone call so they could get bonded out</p> <p>15 of custody.</p> <p>16 Now -- okay. Now we got a Fifth</p> <p>17 Amendment right to bond, right? Okay. But it seemed</p> <p>18 to be being hindered a little bit by these practices</p> <p>19 of sight and sound separations. That's the way it</p> <p>20 gets worked out.</p> <p>21 Now, in our jail, we ran an intake unit,</p> <p>22 we ran a passive seating area where males and females</p> <p>23 all sat together. We ran an intake housing unit,</p> <p>24 there was a co-ed housing unit, the males and females.</p> <p>25 Males go on the lower level, females on the upper</p>	<p style="text-align: right;">Page 112</p> <p>1 And if you give people the opportunity to</p> <p>2 -- to demonstrate adult rational behavior, you reward</p> <p>3 them for that, and you sanction them when you don't.</p> <p>4 You'll get that from them.</p> <p>5 But, again, that's my -- that's -- my</p> <p>6 risk tolerance level's really high. Some people say</p> <p>7 we got to punish.</p> <p>8 Q. And when people ask you about your</p> <p>9 recommendations for how transgender people should be</p> <p>10 housed, what would you tell them?</p> <p>11 A. Now, again, you're talking to Don Leach,</p> <p>12 what would I recommend. I would ask an individual</p> <p>13 where do you feel most comfortable being housed. Can</p> <p>14 you live in a male housing unit? Yes. Okay, we'll</p> <p>15 put you in there.</p> <p>16 If you have any problems while you're in</p> <p>17 there, you let us know. If there's any issues come</p> <p>18 up, you let us know. If something happens while</p> <p>19 you're in there, you let us know. You inform them</p> <p>20 that they have to help participate in their</p> <p>21 incarceration.</p> <p>22 So we'll put you where you feel most</p> <p>23 comfortable, but if a problem develops, you have to</p> <p>24 tell us. But you know what, I would tell that to</p> <p>25 anybody. I would tell that to anybody that goes in a</p>

Page 145

1 So, again, that's all that changing
2 landscape.
3 Q. All right. Thank you.
4 And you're not claiming to have any
5 medical expertise; right?
6 A. I have my EMT certification, but that's
7 about it. That was through the Lexington Fire
8 Department back when I was working at the jail, yes, I
9 had that. But other than that, no.
10 Q. Okay. And do you have any degrees in
11 biology?
12 A. No. I was a liberal arts major.
13 Q. So was I.
14 And have you ever worked in the motor
15 vehicle department before?
16 A. No.
17 Q. And do you have expertise in driver's
18 licenses, specifically?
19 A. No.
20 Q. Okay. And have you ever been
21 disqualified as an expert before?
22 A. Not to my knowledge.
23 Q. Okay. And since you have experience
24 making arrests, I'd like to ask just a couple of
25 questions following up on that.

Page 146

1 So at the point where you make an arrest,
2 how do you identify -- do you identify the sex of the
3 person who you're arresting?
4 A. I did. Had it write it on -- had to
5 write it on the citation.
6 Q. And so how did you decide what to write
7 on the citation for sex?
8 A. I used his driver's license.
9 Q. Okay. Did you -- as far as you recall,
10 did you ever arrest somebody who you thought might be
11 transgender or intersex?
12 A. Not that I can recall, no.
13 Q. Have you ever arrested somebody who
14 didn't have a driver's license?
15 A. Not a juvenile? Not a juvenile.
16 Assuming it's not a juvenile. I've arrested
17 juveniles, they didn't have driver's licenses.
18 Q. With juveniles who did not have driver's
19 licenses, how did you determine what sex to write
20 down?
21 A. Physical appearance. And we would talk
22 to them, of course. You know, we're talking about a
23 long time ago. That would have been back in the --
24 that was in the '80s.
25 Q. Okay.

Page 147

1 A. Long time ago.
2 Q. When you talked to them, did they -- did
3 you ask questions about their sex?
4 A. No, I don't -- I don't recall -- I don't
5 recall really talking about their sex to them too
6 much. It just -- it just was more obvious. Again,
7 we're talking about back in the '80s.
8 Q. Okay. Could you tell me, are there
9 unique concerns in a correctional environment that
10 aren't necessarily relevant in the community?
11 A. Are there unique concerns in the
12 correctional environment that are not relevant in the
13 community?
14 Q. Yes.
15 A. Well, I -- yeah, I mean, we have the
16 Fourth Amendment issues. I mean, intrusiveness of the
17 search, okay, where we have a policy that's going to
18 require a pretty intrusive search, a strip search, you
19 don't see many strip searches in the community. That
20 would probably be one.
21 You know, housing. You know, having to
22 make a decision about what apartment you can live in
23 the -- in the community. I don't know that any
24 governmental agency makes a decision on what apartment
25 you can be housed in based upon your sex or gender

Page 148

1 identity or other issues, I'm not aware of it. So, I
2 mean, that might be another one.
3 Other than that, yeah, I don't -- that's
4 about it off the top of my head.
5 MR. ARKLES: All right. So I'm going to
6 take another very short break. I think we're probably
7 wrapping up here, and so unless -- of course Brad will
8 also have an opportunity to ask you questions.
9 Why don't we just take one last
10 five-minute break.
11 (There was a break taken.)
12 MR. ARKLES: We can go back on the
13 record, and I have no further questions at this time.
14 MR. CHYNOWETH: No questions from the
15 defendants.
16 MR. ARKLES: All right. Then I think
17 we're done.
18 Vickie, is there anything that you need
19 from us?
20 THE REPORTER: Do you both want a copy of
21 the transcript?
22 MR. ARKLES: Yes, please.
23 MR. CHYNOWETH: Yes.
24 THE REPORTER: Do you want the doctor to
25 read and sign? Or do you have read and sign?